

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DOMINIC KEITH LEE,

Petitioner,

vs.

STATE OF MONTANA; BOB
OLSON; START PROGRAM,

Respondents.

CV 21–74–H–DLC–JTJ

ORDER

Before the Court is United States Magistrate Judge John T. Johnston’s Findings and Recommendation. (Doc. 5.) Judge Johnston recommends that Dominic Keith Lee’s petition be dismissed with prejudice and a certificate of appealability should be denied. (*Id.* at 5–6.) Lee has not filed any objections.¹

A party is only entitled to de novo review of those findings to which he or she specifically objects. 28 U.S.C. § 636(b)(1)(C). In the absence of an objection, this Court reviews findings for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear

¹ Following Judge Johnston’s findings and recommendation, Lee mailed the Clerk of Court a letter acknowledging receipt of an “order closing the case” and stating that meant to pursue his appeal through the Ninth Circuit instead. The Court presumes the order referenced is Judge Johnston’s findings and recommendation and notes that Lee does appear to have initiated proceedings before the Ninth Circuit (Docs. 4; 5 at 2.) In short, Lee appears to agree his petition is not properly before this Court.

error review is “significantly deferential” and exists when the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Reviewing for clear error, the Court finds none.

This Court cannot function as an appellate tribunal in Lee’s underlying state court criminal case. *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296 (1970). As such, the Court will dismiss Lee’s petition with prejudice. The Court also agrees Lee has not “made a substantial showing of the denial of a constitutional right” and will decline to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS ORDERED that Judge Johnston’s Findings and Recommendation (Doc. 5) is ADOPTED IN FULL.

IT IS FURTHER ORDERED that Lee’s petition (Doc. 1) is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that no certificate of appealability shall issue.

The Clerk of Court shall enter a judgment of dismissal by separate document and close the case file.

DATED this 28th day of February, 2022.



Dana L. Christensen, District Judge
United States District Court